

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LEONARD EUGENE KEEN §
v. § CIVIL ACTION NO. 6:08cv56
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Leonard Eugene Keen, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Keen was convicted of solicitation of capital murder on January 10, 2001, receiving a sentence of life in prison. He says that the judgment on the jury verdict is not signed and has no time by which it could be determined if the document was created beforehand; the trial court erred in “not sticking to the indictment accusations;” he was denied effective assistance of counsel; and the selection of the jury panel was unlawful because the jurors selected were all white.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed. The Magistrate Judge observed that the present petition is the second habeas corpus petition which Keen has filed concerning this same conviction. *See* Keen v. Director, TDCJ, civil action no. 6:06cv47 (E.D.Tex., dismissed March 9, 2006, certificate of appealability and application for leave to proceed *in forma pauperis* on appeal denied by Fifth Circuit on October 24, 2006).

The Magistrate Judge stated that under 28 U.S.C. §2244(b)(3), before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application. In this case, the Magistrate Judge said, Keen made no showing that he has received permission from the Fifth Circuit to file a successive application for the writ of habeas corpus, nor that he has even attempted to do so; the on-line records of the Fifth Circuit Court of Appeals do not show that Keen has sought or received permission from the Fifth Circuit to file a successive petition. Until such time as Keen obtains leave from the Fifth Circuit to file a successive petition in district court, the Magistrate Judge said, he cannot pursue the present petition in the district court, because without such leave, the district court lacks jurisdiction to consider his claims. *See Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003) (where prisoner did not have permission to file a second or successive habeas petition, the district court lacked jurisdiction to entertain his claims). The Magistrate Judge therefore recommended that the petition be dismissed without prejudice, subject to receipt of permission to file a successive petition, and that a certificate of appealability be denied *sua sponte*.

Keen received a copy of the Magistrate Judge's Report on March 4, 2008, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice, with refiling conditioned upon the receipt of leave by the Petitioner Leonard Keen from the Fifth Circuit Court of Appeals to file a successive petition. It is further

ORDERED that the Petitioner Leonard Keen is hereby DENIED a certificate of appealability *sua sponte*. The denial of the certificate of appealability shall have no effect upon Keen's right to seek leave from the Fifth Circuit Court of Appeals to file a successive petition. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 2nd day of April, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**